

to reverse the burden of proof. Trinity's most fundamental obligation was to ascertain the needs and interests of Monroe, its community of license, and to provide programming responsive to those needs and interests. See Glendale Conclusions, ¶151 Pp. 90-91. Trinity did not do this. If Trinity wanted to argue that the needs and interests of Monroe were the same as in Atlanta, it had to offer evidence establishing that identity. No such evidence was offered. Indeed, the record shows that Monroe and Atlanta are thirty-five miles apart and completely independent communities. Joint Ex. 5, P. 2. Monroe and Atlanta are in different counties. Since there is no evidence that the needs and interests of Monroe are the same as in the Atlanta area, it must be concluded that Trinity did not meet its burden of proof on that point.

30. Another instance where Trinity improperly attempts to shift the burden of proof is its response to the undisputed fact that the quarterly report for the first quarter of 1992 does not show any programming responsive to the issue of state and federal government. Trinity acknowledges that fact but then argues:

However, the record does not reveal how thorough or exhaustive was the purported 'search' by the TBN Public Affairs Department, especially since TBN had broadcast programming responsive to that particular issue during one of the

preceding quarters in the License Term.
(TBN Ex. 32, Tab B, p. 36)

Trinity Conclusions, P. 75 n.33. This argument is specious on its face. The only evidence Trinity offered of its programming that did not consist of vague and general descriptions was its quarterly reports. Trinity clearly had the burden of establishing that it provided programming responsive to its ascertained issues. Its suggestion that the Presiding Judge should find that there may have been programming responsive to that issue that Trinity could not find is absurd. The acceptance of such an argument would make a mockery of the burden of proof. The Presiding Judge may not assume that there are program episodes other than those listed in the quarterly reports that are responsive to the issues listed in those reports. If Trinity wanted to make such an assertion, it should have offered competent and specific evidence as to what those other episodes were.

D. The Connection Between Ascertainment and Programming

31. Trinity attempts to use Ms. Connolly's testimony to paint a picture where the WHSG ascertainment efforts played an important role in determining the issues to be treated on TBN network programming. Trinity Findings, ¶¶29-43 Pp. 17-24. In its findings, Trinity refers to many network programs that were allegedly responsive to the needs and interests of the

WHSB service area and offers examples of episodes that allegedly were responsive to the needs and interests of the WHSB service area. Trinity Findings, ¶¶60-71 Pp. 31-36. In fact, a review of Trinity's quarterly reports shows that there was little connection between the WHSB ascertainment and the issues treated on TBN network programming.

32. Ms. Connolly's testimony certainly does not establish that the WHSB ascertainment was an important factor in determining TBN network programming. Indeed, she could not remember one instance in which she scheduled a guest or a public service announcement to meet a need of the WHSB service area. Trinity Ex. 33, P. 5, Joint Ex. 6, P. 1. While Ms. Connolly claims to be "certain" she did schedule guests to meet the needs of the WHSB service area, her inability to recall even one instance in which she did so is telling.

33. A review of the network programs cited by Trinity shows how meaningless the WHSB ascertainment was in determining the TBN network programming. In ¶¶61-62 of its proposed findings (Pp. 31-32), Trinity cites Feedback. The WHSB ascertainment had no impact on that program. Feedback was produced by WHFT(TV) in Miami, Florida. Joint Ex. 6, P. 1. In reviewing the topics and guests for that program, Mrs. Connolly would determine if the proposed program was responsive to an issue in the Miami area - not the Monroe area. Joint Ex. 6, Pp. 1-2. Joy (TBF Findings, ¶¶63-64 Pp.

32-33) was primarily designed to meet the needs and interests of the KTBN service area, and Mrs. Connolly could not recall one specific instance in which she booked a guest on Joy to meet a need of the WHSG service area. Trinity Ex. 33, Pp. 6-7. The network Praise the Lord program (Trinity Findings, ¶65 Pp. 33-34) dealt with the needs and interests of the WHSG service area so rarely that only eight segments of that program (which was broadcast five nights a week) are listed in the quarterly reports. Glendale Findings, ¶44 Pp. 24-25. Calling Dr. Whitaker and The Doctor and the Word (Trinity Findings, ¶¶66, 70 Pp. 34, 36) dealt with health issues regardless of what the ascertainment showed. Glendale Findings, ¶47 P. 27. Only five aired episodes of A Call to Action⁵ (Trinity Findings, ¶67 P. 34) were listed in the quarterly reports as dealing with ascertained issues. Glendale Findings, ¶46 P. 26. While The 700 Club is listed in the quarterly reports, that program was produced by the Christian Broadcasting Network, and no evidence exists that the WHSG ascertainment had any impact on that program. Finally, A Date With Dale (Trinity Findings, ¶71 P. 36) has a grand total of one mention in the quarterly reports (Trinity Ex. 32, Tab B, P. 23), and the program Back on Course referred

⁵ In ¶42 of its proposed findings (P. 23), Trinity proposes a finding that the producers of that program lived in Atlanta. That proposed finding must be stricken as based upon non-record evidence. Tr. 103.

to in Mrs. Connolly's testimony (Trinity Findings, ¶39 P. 22) is nowhere to be found in the quarterly reports. Trinity's attempt to paint a pretty picture where the WHSG ascertainment played an important role in determining the programming does not withstand the cold, harsh facts.

E. Trinity's Treatment of Community Issues

34. Trinity argues that, except for state/local government⁶ in the first quarter of 1992, "WHSG-TV provided responsive programming to the needs which its ascertainment uncovered." Trinity Conclusions, ¶135 P. 83. That conclusion is incorrect. As Glendale showed in its proposed findings, no programming responsive to the issue of state and federal government was offered in any of the three quarters in which it was ascertained to be a top issue. Glendale Findings, ¶¶ 75, 81, 87 Pp. 42, 44, 46. Trinity's claim that such programming was offered in the third quarter of 1991 (Trinity Conclusions, P. 75 n.33) is wrong. The cited exhibit (Trinity Ex. 32, Tab B, P. 36) merely shows that that issue was one of the top ascertained issues in that quarter. A review of the listed programs fails to show one program responsive to the issue of state and federal government. Trinity Ex. 32, Tab B, Pp. 39-52. Moreover, Trinity failed to note that in the

⁶ Actually, the issue in question is state and federal government. Joint Ex. 5, P. 3.

fourth quarter of 1991, crime and housing were top community issues according to its own tabulations. Glendale Findings, ¶23 P. 11. No programs were listed for those issues in that quarter. Finally, none of the listed programs under the issue of transportation did anything to meet the needs and interests of Monroe on this issue. Glendale Conclusions, ¶¶172-173 Pp. 103-104.

35. Glendale has demonstrated that many of the programs listed in the quarterly reports were not responsive to the needs and interests of the service area because (1) they dealt with events or programs elsewhere in the country, (2) the programs dealt with matters that Trinity's own ascertainment showed to be unimportant, or (3) the programs were the recitation of personal religious experiences that have no relevance to renewal expectancy. Trinity offers several examples of programs that allegedly met the needs and interests of the service area. Ironically, the majority of these examples are programs which had nothing to do with meeting the needs and interests of the WHSG service area.

36. In ¶62 of its proposed findings (P. 32), Trinity cites a Feedback program that was broadcast on August 15, 1991 and dealt with the issue of homelessness. Trinity Ex. 32, Tab B, P. 75. What Trinity does not say is that this program, which ran in the third quarter of 1991, is listed in the report for the fourth quarter of 1991. The listing of that

program in that report is a clear error. Homelessness was not one of the top issues for the third quarter of 1991. Id. at P. 36. The cited program thus does absolutely nothing to show that Trinity met its cited goal of addressing the top five community issues.

37. In ¶64 (P. 33), Trinity cites a Joy program broadcast on September 9, 1991 which allegedly was responsive to the issue of transportation. The description of this program reads as follows:

Jim McCellan [sic] discussed freeway driving with Dr. David Rizzo, author of a book on alternate side-street routes to freeway driving. Dr. Rizzo suggested ways to experience stress-free driving by taking side-streets if one has the time, always having a "Plan B" should the freeways be unusually crowded, listening to the radio for traffic up-dates and having "freeway manners". Dr. Rizzo encouraged viewers to help alleviate freeway congestion by not driving unnecessarily and try car-pooling.

Trinity Ex. 32, Tab B, P. 52. This program has nothing to do with transportation in Walton County, Georgia. If one looks at a road atlas for Georgia, one can readily see that freeways vs. side-streets is not an issue in Walton County. This program clearly dealt with the classic southern California problem of how to get around in that urban sprawl. The program has no relevance to Monroe, Georgia.

38. Trinity also cites an October 14, 1991 broadcast of A Call to Action as allegedly responsive to the issue of Education/Schools. Trinity Findings, ¶67 P. 34, citing Trinity Ex. 32, Tab B, P. 66. The description of the program states:

A history of the decline of the quality of today's education was presented and the pannelists[sic] suggested way[sic] in which the high school student could form clubs for prayer and Bible reading with emphasis on the civil rights of students based in the recent Mergens decision of the Supreme Court.

Clearly, this program dealt with prayer in the public schools, which is fundamentally an issue of separation of church and state. Separation of church and state was listed in Trinity's ascertainment tabulations for the fourth quarter of 1991, but it did not receive a single mention as a top community issue. Trinity Ex. 32, Tab E, P. 4. Thus, while education was an important issue according to Trinity's ascertainment, the topic it chose to discuss was unimportant to the community.

39. With respect to the program Treasures Out of Darkness, Trinity cites a June 1, 1991 program that allegedly was responsive to the issue of drug and alcohol abuse. Trinity Findings, ¶68 P. 35. A review of the program description (Trinity Ex. 32, Tab B, P. 22) shows that the program was a description of the guest's personal conversion

experience, which is personally moving but has no relevance to renewal expectancy. Glendale Conclusions, ¶176 P. 106.

40. The most striking feature of Trinity's programming is that it had absolutely no treatment of issues from a local perspective. Nobody from Monroe or Walton County appeared on the station. Joint Ex. 5, P. 1, Joint Ex. 6, P. 1. The station did not cover any issue, event or problem peculiar to Monroe or Walton County. Id. There is no evidence that any of the network programming provided information specific to the service area. As Glendale has noted, it would be hard to discern that Monroe, Georgia existed by watching Trinity's programming. Trinity's children's programming is irrelevant to this proceeding for the reasons stated in ¶165 of Glendale's proposed conclusions (Pp. 100-101).

F. The Bureau's Findings re Public Service Announcements

41. The Mass Media Bureau proposes findings concerning public service announcements that are inaccurate. It proposes a finding (based on Mr. Jackson's testimony) that the station broadcast twenty-five to thirty PSAs a week. Bureau Findings, ¶22 P. 12. Joint Ex. 4 demonstrates that Trinity broadcast twenty-seven PSAs in the last month of the renewal period. The Bureau also fails to note that the quarterly report for the second quarter of 1991 lists PSAs for the third quarter of 1991 (Trinity Ex. 32, Tab B, P. 30) and that no PSAs are

listed in the quarterly report for the first quarter of 1992. Glendale Findings, ¶66 P. 38.

G. Renewal Expectancy Summary

42. Trinity made no effort to ascertain the needs and interests of its community of license. It repeatedly failed to follow its own ascertainment procedures. There was little connection between the ascertainment it did perform and its programming. Trinity programmed WHSG as a high-powered translator of its flagship California station. Not one person from Monroe or Walton County appeared on the station, and not one issue or event peculiar to those areas was covered on the station. There is no record public witness testimony or community involvement. Finally, the Presiding Judge must take into account the record of misconduct and deception by Trinity's directors and officers developed in MM Docket No. 93-75. Glendale Conclusions, ¶¶191-193 Pp. 114-115. Under every renewal expectancy factor, Trinity's record is substandard and minimal. No renewal expectancy may be awarded.

III. CONCLUSION

Accordingly, Glendale asks the Presiding Judge to grant its application for the reasons stated herein and in its proposed findings of fact and conclusions of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dana V. Chisholm, do hereby certify that on the 4th day of November 1994, a copy of the foregoing "Reply to Proposed Findings of Fact and Conclusions of Law" was sent first-class mail, postage prepaid to the following:

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